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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

File: WAC 01 116 54575 Office: CALIFORNIA SERVICE CENTER

Date: **JAN 15 2003**

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the employment-based preference visa and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Hawaii corporation that is engaged in tours and weddings. It seeks to employ the beneficiary as its vice president and, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition on the bases that (1) the beneficiary was not employed in an executive or managerial capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States in a nonimmigrant status, and (2) the proffered position is neither executive nor managerial in nature.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the director incorrectly identified the proffered position as a sales manager position when it is an executive position.

Section 203(b) of the Act states, in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The petitioner is a tour company that caters to Japanese honeymoon couples in the State of Hawaii. It employs 10 persons and has gross revenues in excess of \$3 million. According to the petitioner, the beneficiary is currently occupying the proffered position of vice president as an L-1A nonimmigrant worker at an annual salary of \$30,000. In the initial petition filing, the petitioner described the beneficiary's position with the foreign entity and the proffered position as follows:

[Position with the Foreign Entity]

In her position as Director of [REDACTED] [the beneficiary] had full responsibility for the general director and operations of the Japan parent company. Directors in Japan companies have more day-to-day responsibility and control over the corporation than in the United States. This authority extends to the hiring and firing of all executive positions.

[Position with the Petitioner]

[The beneficiary] is serving in the executive position of Vice President. Her duties are subject only to the control, oversight, and direction of the President, and she is responsible for overseeing the operations of our company in the United States, for hiring and firing management level and lower level personnel, and for developing and directing the operations of the company on behalf of the Japanese parent company. She is researching the possibility of expanding our business in the New York market, a popular destination for young Japanese couples. . . . Functioning autonomously, [the beneficiary] is responsible for managing and directing all development activities of our company as they pertain to our company in Japan. She is required to communicate with our parent company on a regular basis to ensure that our corporate philosophy is established and is being delivered accurately. She represents the unique concerns and requirements of the international operations to headquarters and provides significant contributions and the formulations of strategic plans to ensure that the business and strategic policies are effectively incorporated into our business activity.

The record also contains organizational charts for the foreign entity and the petitioner. The foreign entity's organizational chart indicates that the beneficiary supervised two employees and the areas of beauty/apparel/attendants, information, reservations/PR/administrative, functions/lounges, general affairs/copying, management, pickup/drop-off, video room, and choir/M.C. The petitioner's organizational chart indicates that the proffered position does not have supervisory authority over employees. It lists the proffered position as vice president of east/west division and research marketing.

The director found that the beneficiary's position with the foreign entity as well as the proffered position were neither executive nor managerial in nature, and she denied the petition. Regarding the position with the foreign entity, the director concluded that the beneficiary's job description was "too general

and vague to convey any understanding of exactly what the beneficiary will be doing on a daily basis." Regarding the proffered position, the director concluded, in part, that the beneficiary would be required to perform numerous menial tasks because "there aren't enough employees left to perform them."

On appeal, counsel states that the director improperly focused on whether the beneficiary was employed in a managerial capacity for the foreign entity. Counsel asserts that the beneficiary executed executive duties in her role with the foreign entity and that the petitioner clearly described her executive-level job responsibilities. In responding to the director's conclusions about the proffered position, counsel also states that the director improperly focused on whether the beneficiary functions as a manager. Counsel states that the beneficiary holds an executive level position with the petitioner and that she does not perform the petitioner's daily operational tasks.

As counsel asserts on appeal that the beneficiary's roles with the foreign and United States entities are in executive capacities, they shall be analyzed as such.

Pursuant to 8 C.F.R. 204.5(j)(2):

Executive capacity means an assignment within an organization in which the employee primarily:

- (A) Directs the management of the organization or a major component or function of the organization;
- (B) Establishes the goals and policies of the organization, component, or function;
- (C) Exercises wide latitude in discretionary decision-making; and
- (D) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The definition of executive capacity has two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definition. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. Champion World, Inc. v. I.N.S., 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir.(Wash.) July 30, 1991) (emphasis in original).

I. BENEFICIARY'S ROLE WITH THE FOREIGN ENTITIY

The petitioner has not persuasively established that the beneficiary was employed in an executive capacity with the

foreign entity. On appeal, the petitioner submits a description of the beneficiary's role with the foreign entity, which lists such responsibilities as wedding apparel purchasing, honeymoon travel planning, research and development of new facilities, and cultivating and maintaining relationships with clients. The petitioner maintains that the beneficiary is involved in "all facets" of these responsibilities.

Purchasing apparel, planning travel, and building relationships with clients cannot be considered high level responsibilities of an executive; they are the duties of a sales and marketing person. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593 (BIA 1988). Accordingly, the petitioner has not established that the beneficiary was employed in an executive capacity with the foreign entity for at least one year in the three years immediately preceding her entry into the United States in a nonimmigrant status. The director's decision to deny the petition on this basis will not be disturbed.

II. BENEFICIARY'S ROLE WITH THE PETITIONING ENTITY

The petitioner's description of the proffered position does not contain the level of detail that is needed in order to show that the proffered position primarily involves the high level responsibilities that are specified in the definition of executive capacity. The duties of the proffered position are described in broad terms, and are merely a reiteration of the regulatory definition.

For example, the petitioner claims that the beneficiary is responsible for "overseeing the operations of our company in the United States" and "developing and directing the operations of the company on behalf of the Japanese parent company." The petitioner does not, however, identify the types of duties that the beneficiary would execute in order to perform these activities. The activity of "developing" a company's operations may involve tasks that would not be considered executive-level responsibilities, as sales and marketing duties may be involved in developing a business. Similarly, the beneficiary's role in researching the possibility of expanding the petitioner's operations in New York may also encompass activities that are not associated with an individual who primarily executes executive-level duties.

Specifics are clearly an important indication of whether an applicant's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff'd, 905 F. 2d 41 (2d. Cir. 1990). Here, the petitioner has not provided any

specificity to the job description of the proffered position. Instead, the petitioner relies upon its statements that the proffered position is in an executive capacity. The petitioner's statements are insufficient evidence of the proffered position's level of authority and daily activities. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. Systonics Corp. v. I.N.S., 153 F.Supp.2d 7 (D.D.C. 2001). If staffing levels are used as a factor in determining whether an individual is an executive or manager, section 101(a)(44)(C) of the Act requires the Service to consider the reasonable needs of the organization in light of its overall purpose and stage of development.

Here, the staffing levels of the petitioner's operations are not a determining factor in the denial of the petition. Rather, it is the petitioner's generalized job description of the proffered position that renders the beneficiary ineligible for classification as a multinational executive. The petitioner has not established that the beneficiary primarily directs the management of the petitioner or a function of the petitioner, establishes the goals and policies of the petitioner or a function of its operations, exercises wide latitude in discretionary decision-making, and receives only general supervision from high level executives. For the reasons stated above, the petitioner has not met its burden of establishing that the proffered position is in an executive or managerial capacity. Accordingly, the director's decision to deny the petition on this basis will also not be disturbed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.